

HUMAN SERVICES BOARD

INTRODUCTION

A hearing in this matter was held on February 5, 2009. The petitioner was the only witness at the hearing. The Department essentially conceded that it had no other admissible evidence to submit.

1. The petitioner is the mother and single parent of a now-seven-year-old boy. In May 2007 the Department received a report that the petitioner had bitten her son on his finger. In a decision dated October 6, 2008 the Department affirmed its decision to substantiate the incident as child abuse.

2. The petitioner testified that in May 2007 she was attempting to get her son ready to go to day care, but he was

resisting and misbehaving. She states that her son grabbed her face with both his hands and was scratching her, and that she bit his finger "by accident" when his hands were on her face. She denies she did it in anger, but as a sudden reaction to him scratching her. She admits that it was not appropriate for her to have bitten him.

3. The petitioner admits that his finger was "red" after she bit it, but states that there was no bleeding, swelling, or teeth mark. She admits that her son was crying and does not deny that it caused him some pain.

4. Immediately following this incident she drove her son to daycare, which was located a short distance from her house. She admits her son was still crying slightly when they arrived at the daycare, and that she told the daycare provider what had happened.

5. Apparently, the daycare provider reported the incident to the Department, and an investigation and the subsequent substantiation of abuse ensued. However, no other evidence was presented at the hearing.

6. The hearing officer found the petitioner's testimony to be credible. She was candid and non-evasive in her testimony, and the record (i.e., the Department's Review decision) indicates that she has been consistent in her

version of the incident. There is no evidence that the petitioner bit her son intentionally or in anger, or that she caused him any injury other than some brief and non-severe pain.

7. Though credible, the petitioner was not very articulate, and she appeared to be limited in her ability to comprehend the legal process in which she now finds herself. She stated that she has received instruction (classes or counseling) regarding parenting skills, but there is no evidence or indication that this is or was related to the incident in question.

ORDER

The Department's decision is reversed.

REASONS

The Department is required to investigate reports of child abuse or neglect and to maintain a registry with the names and records of those who are determined to have a "substantiated" finding of abuse or neglect. 33 V.S.A. § 4913 and 4916. A report is substantiated when it is "based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected." 33 V.S.A. § 4912(10).

Any person against whom a report of abuse is substantiated by DCF may appeal to the Human Services Board. In such cases the burden of proof is on the Department. 33 V.S.A. § 4916b.

The statute at 33 V.S.A. § 4912 defines abuse and neglect, in pertinent part, as follows:

- (2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare . . .
- (3) "Harm" to a child's health or welfare can occur when the parent or other person responsible for his welfare:
 - (A) Inflicts, or allows to be inflicted, upon the child, physical or mental injury . . .
- (6) "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means. . .

In this case there is no evidence that the petitioner's actions were anything but accidental or that they caused any harm or injury to her child within the meaning and contemplation of the above definitions. Therefore, it must be concluded that the Department has not met its burden of proof, and its decision substantiating the report of child

abuse in question must be reversed, and the petitioner's name must be removed from the Department's child abuse registry.

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